IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

WP(C).No. 25785 of 2004(T)

PETITIONER:

VARGHESE, S/O.PAILY,
KALARIKKAPARAMBIL PUTHANPURAKKAL HOUSE,
KURICHILAKODE KARA, KODANADU VILLAGE,
KUNATHODU TALUK.

BY ADV. SRI.RAJESH VIJAYAN

RESPONDENT:

IRINJALAKUDA KURIES AND FINANCE
PVT.LTD. IRINJALAKUDA, REPRESENTED BY
ITS MANAGING DIRECTOR.

BY ADV. SRI.K.S.BHARATHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE PETITION AND AFFIDAVIT IN I.A.NO.3566/2004 IN O.S.NO.117/2001.

EXT.P2: TRUE COPY OF THE PETITION IN E.A.NO.570/2004 DATED 6.7.2004 IN O.S.NO.117/2001.

EXT.P3: TRUE COPY OF THE SALE PROCLAMATION DT. 8.7.2004.

PIUS C. KURIAKOSE,J.

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W.P.(C)No.25785 of 2004

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Dated: 23rd May, 2007

JUDGMENT

The judgment-debtor in a proceeding for execution of a money decree obtained by the respondent-Company against him has filed this Writ Petition seeking a direction to the Sub Court not to proceed with the execution proceedings or conduct sale of his properties as per Ext.P3 sale proclamation. The prominent ground on which he seeks reliefs is that on the original side he has filed an application to set aside the ex-parte decree. He has a further ground that there has been gross undervaluation of his property in the matter of Ext.P3 sale proclamation.

2. The total amount due under the decree to the respondent is roughly Rs.2,50,000/- as can be discerned from Ext.P3 proclamation. While admitting the Writ Petition this court granted stay on condition that the petitioner pays a sum of Rs.30,000/- towards the decree within two months from 25.8.2004. The petitioner did not remit the amount within the stipulated time. But this court on his application for enlargement of time enlarged the time for payment of the amount by one month from 28.10.2004. Learned counsel for the respondent is unable to submit as to whether within the enlarged time the

petitioner has made the remittance.

3. Nothing prevented the petitioner from seeking stay of execution from the trial court where he has filed the application for setting aside the ex parte decree. If he had good grounds to have the decree set aside, he could have sought and got an early decision on that application.

4. On going through the grounds it is clear that the petitioner has not so far been successful in getting stay of the execution proceedings from the trial court. Under these circumstances, he cannot aspire for the reliefs he seeks under Article 227 of the Constitution except to the following limited extent. Accordingly, the Writ Petition will stand disposed of issuing the following directions:

If the petitioner has actually remitted the sum of Rs.30,000/- which was directed by this court before 28.11.2004, the proceedings for execution will be kept in abeyance till 15.6.2007. It is open to the petitioner to seek appropriate orders for stay, if not final order, from the trial side if his application to set aside ex-parte decree Ext.P1 is even now pending. As for the other ground raised in the Writ Petition regarding the valuation of the property mentioned in Ext.P3, it is open to the petitioner to seek a reasonable period, say three months

from the execution court to arrange for a private sale of the property so that he can realise the amounts necessary for liquidating the decree debt. Needless to say the execution court will take early decision if an application in that line is filed by the petitioner within three weeks of receiving copy of this judgment.

srd **PIUS C.KURIAKOSE, JUDGE**